IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 8TH MARCH 2007 / 17TH PHALGUNA 1928

WP(C).No. 4019 of 2007(C)

PETITIONER:

ALFRED ROCKEY K.,
KALATHIPARAMBIL HOUSE, P.O.VENNALA,
EDAPPALLY SOUTH VILLAGE, COCHIN-28.

BY ADV. SRI.K.V.SOHAN
SRI.SREEJA SOHAN.K.
SMT.SANJANA R.NAIR

RESPONDENTS:

---

1. KERALA STATE HANDLOOM DEVELOPMENT CORPORATION LTD., REPRESENTED BY ITS MANAGING DIRECTOR, KANNUR.

2. THE CHAIRMAN,
KERALA STATE HANDLOOM DEVELOPMENT CORPORATION LTD., KANNUR.

BY ADV.SRI.A.K.JAYASANKAR NAMBIAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1: TRUE COPY OF ORDER DT. 8/12/2005.

EXT.P2: TRUE COPY OF MEDICAL CERTIFICATE DT. 16/11/2006.

EXT.P3: TRUE COPY OF REPRESENTATION DT. 16/11/2006.

EXT.P4: TRUE COPY OF ORDER DT. 10/11/2006.

EXT.P5: TRUE COPY OF JUDGMENT DT. 30/11/2006.

EXT.P6: TRUE COPY OF LETTER DT. 9/1/2007.

EXT.P7: TRUE COPY OF ORDER DT. 1/1/2007.

EXT.P8: TRUE COPY OF LETTER DT. 14/6/2005.

EXT.P9: DO. DT. 12/10/2006.

EXT.P10: TRUE COPY OF REPRESENTATION DT. 23/9/2006.

A.K. Basheer, J.

- -

W.P(C) No. 4019 of 2007-C

- -

Dated this the 8th day of March, 2007.

J U D G M E N T

Petitioner is working as Superintendent in the Kerala State Handloom Development Corporation Ltd. (for short, the Corporation). By Ext.P4 order dated November 10, 2006, petitioner was transferred from the Regional Office at Ernakulam to the Head Office at Kannur. It appears that petitioner was not happy about the order of transfer. Therefore he had preferred a representation before the Chairman/ Managing Director of the Corporation with a request to reconsider the matter. By judgment dated November 30, 2006 in W.P.31739/06 this Court directed the Corporation to consider the said representation and take an appropriate decision thereon. Consequently by order dated January 1, 2007, a copy of which is on record as Ext.P7, the Chairman took the view that the request made by the petitioner could not be entertained.

2. Shortly thereafter, the Corporation issued Ext.P6 communication to the petitioner informing him to join duty at Kannur within 7 days; and that on his failure to do so, appropriate disciplinary action was likely to be taken against him. He was further informed that the medical certificate dated November 15, 2006 produced along with his application requesting for 47 days lave from the instant date had also been rejected since it was received one month after his entering on leave. The Corporation further made it clear that his absence during the above period would be treated as "unauthorised".

3. The prayer in this writ petition is to issue a writ of certiorari or such other appropriate writ, order or direction to quash Exts.P4, P6 and P7. There is a further prayer to issue a writ of mandamus or such other direction to treat the period of leave applied for by the petitioner on medical ground as "proper".

4. It is contended by the learned counsel that the order of transfer is arbitrary and vitiated. The said order has been issued due to extraneous and political reasons and primarily because of Union rivalry. It is further contended that Ext.P7 order passed by the Chairman is apparently a non-speaking order inasmuch as the various contentions raised by the petitioner have not been adverted to at all. Petitioner has got a further contention that the representation submitted by the petitioner ought to have been considered by the Managing Director and not by the Chairman who is the appellate authority.

5. I am unable to accept the above contentions raised by the petitioner for reasons more than one. A perusal of Ext.P7 order shows that reasons have been stated by the author of the order as to why the request made by the petitioner was not liable to be considered. It has also been pointed out by the Chairman in Ext.P7 order that petitioner was shifted to Kannur with a specific purpose to complete a time bound Project. Anyhow, I am satisfied that Ext.P7 order does not suffer from any infirmity or vitiating factor.

6. As regards the challenge against Ext.P6 order also I am not satisfied that the prayer made by the petitioner is liable to be allowed. The Corporation had considered the application for leave submitted by the petitioner. Obviously the application for leave had been received by the Corporation after the petitioner had entered on leave. Yet again, it

is for the employer to take an appropriate decision in matters like this. This Court need not, in exercise of its power under Article 226, review such a decision or subject it to judicial scrutiny especially since no malafides or other vitiating circumstances have been pointed out.

7. There is an intervening development that has occurred during the pendency of this writ petition which has to be referred to. It is on record that petitioner was relieved from the Regional Office at Ernakulam on November 17, 2006. But the petitioner has not joined duty at Kannur till date. As mentioned earlier, by Ext.P6 communication the Corporation had informed the petitioner that he had to assume duty at Kannur within 7 days from the date of the communication viz., January 9, 2007. Even after receipt of Ext.P6, petitioner has not bothered to join duty at Kannur.

8. Learned counsel submits that the Corporation has now published a notification in Rashtradeepika daily on March 1, 2007 directing the petitioner to join duty within 3 days from the date of publication of the notice. It has been further notified that if the petitioner did not join duty within the time stipulated above, it would be presumed that he had no intention to continue in service and it would be treated as though he had voluntarily relinquished the post. A photocopy of the said notice published in the newspaper has been produced as Ext.P11. It is the case of the petitioner that he had not responded to Ext.P11 since this writ petition was pending before this Court. Learned counsel submits that the petitioner is prepared to submit his explanation to the above notice if an opportunity is given to him. Learned counsel further submits that petitioner is prepared to

join duty within 7 days from today. The above submission is recorded.

9. In the peculiar facts and circumstances I am of the view that petitioner can be given such an opportunity. If the petitioner joins duty as undertaken by him and if he submits a reply to Ext.P11 notice within two weeks from today, it will be open to the Corporation to consider the explanation and take an appropriate decision in the matter. It is made clear that the challenge made by the petitioner against the transfer is repelled. All other action that may be taken by the Corporation shall be in accordance with law and after affording sufficient opportunity to the petitioner.

Writ Petition is disposed of in the above terms.

A.K. Basheer
Judge.

an.